

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of:

Applications of

MB Docket No. 14-57

Comcast Corp. and  
Time Warner Cable, Inc.

For Consent To Assign Or Transfer Control  
of Licenses And Authorizations

To: The Commission

RESPONSE OF SPOT ON NETWORKS, LLC

AND NOW COMES SPOT ON NETWORKS, LLC (“Spot On”) by and through its counsel, Frederick A. Polner, Esq., and hereby submits this its RESPONSE in the above captioned matter. In support whereof it is averred as follows:

Summary

On August 22, 2014, Spot On filed with the Federal Communications Commission (the “Commission” or “FCC”) its LEGAL COMMENTS (the “COMMENTS”) in the above captioned proceeding.

In those COMMENTS Spot On demonstrated why the new merged entity will seriously destroy competition in the deployment of highspeed broadband and why unless four specific

conditions (the “CONDITIONS”) delineated in the COMMENTS are attached to any approval of the proposed merger, the public interest, convenience, and necessity would not be served. A full explanation of the harms are detailed in the COMMENTS.

Many thousands of other filings also were made in the captioned proceeding. This RESPONSE will focus on two of those other filings and point out how recent views publicly expressed by FCC Chairman Wheeler vigorously support the need to add the CONDITIONS which Spot On advocates in its COMMENTS.

The CONDITIONS which the FCC should attach to ensure the merger meets the public interest requirement are the following:

1. Comcast shall offer to competitors for resale its upstream and downstream high speed broadband access service for use in a competitor’s provision of Wi-Fi service.
2. Such offering shall be on commercially reasonable wholesale terms and conditions.
3. In multifamily residential or multitenant commercial buildings, where Comcast is the sole wired provider of high speed broadband access, Comcast shall not, directly or indirectly, limit competitive choice to consumers in those buildings. More specifically, Comcast shall (a) offer wholesale high speed broadband access to competitors at industry standard wholesale pricing for all available speeds and capacities and (b) refrain from offering retail services at predatory pricing.
4. In the event Comcast shall fail to comply with (1), (2) or (3) above, Comcast shall be liable to the United States of America in the amount of \$100,000 for each violation for each day during the period of time of such noncompliance.

### Response

Both Dish Network Corporation (“Dish”) and Netflix, Inc. (“Netflix”) filed Petitions To Deny in the captioned matters. Although filing separate petitions, each one raises concerns about the merged entity’s incentive and ability to stifle competition if the proposed merger were allowed to go through. Both point out how video program providers using the Internet to deliver

content to consumers (Over the Top) are vulnerable to the merged entity's ability to control the choke point of entry into the consumer's home. (See Dish discussion beginning at page 54. See Netflix discussion beginning at page 43.) Netflix, especially, highlights how the merged entity can control the pricing and the terms and conditions of service of highspeed broadband into a consumer's home. Both decry the lack of consumer choice. Spot On agrees with those concerns.

Spot On can and does offer a choice. Spot On is a Wireless Internet Service Provider ("WISP") and provides an alternative for consumers to reach this Over the Top programming. But, as explained in its COMMENTS, Spot On is dependent upon Comcast and Time-Warner Cable allowing Spot On to purchase connections to the Internet.

As detailed in the Declaration filed with its COMMENTS, Spot On has experienced actual difficulty in obtaining Internet connections from Comcast. In April 2013, Comcast started to deny Spot On's requests for Internet connections and even threatened to consider bringing possible civil and criminal charges against Spot On as a weapon to deter Spot On from competing with Comcast. The experience Spot On has had with Time-Warner Cable is very different. If the FCC were to approve Comcast's acquisition of control over Time Warner, it is likely Time Warner will change its business relationship to replicate how Comcast has treated Spot On and the public interest will suffer due to reduced competition and reduced innovation.

The importance of encouraging competition in the "last mile" connection to highspeed broadband was recently championed by Tom Wheeler, Chairman of the Commission. In his public remarks on September 4, 2014 at 1776 Headquarters, the Chairman recognized that meaningful competition for highspeed broadband is lacking and "Americans need more competitive choices for faster and better Internet connections, both to take advantage of today's new services, and to incentivize the development of tomorrow's innovation." He particularly

took aim at the lack of competition in the “last mile” connection to the consumer and noted how difficult it is for consumers to switch from an incumbent Internet service provider due to the lack of alternative providers available to that consumer. He emphasized the importance of allowing consumers to have a competitive choice. He emphatically articulated his view of what should be happening by saying, “We must try our best – companies and communities, incumbents and insurgents – to foster more competition. The best answer for limited competition is more competition, plain and simple.” He then articulated how the FCC should be guided in its own actions:

First, where competition exists, the Commission will protect it.

Second, where greater competition can exist, we will encourage it.

Applying these principles to the captioned matter requires little thought. Spot On *does* provide and *can* provide a competitive connection to the Internet as a WISP. And, as demonstrated in its COMMENTS, Spot On needs the Commission’s protection from being snuffed out by the merged entity. The Commission easily can render this protection by attaching to any approval of the proposed merger the CONDITIONS set forth in the Spot On COMMENTS.

Respectfully Submitted

/s/

SPOT ON NETWORKS, LLC

By and through its counsel  
Frederick A. Polner, Esq.  
261 Bradley Street  
New Haven, CT 06510

September 23, 2014